

March 5, 1976

The Honorable George B. Roberts, Jr.
Speaker of the House of Representatives
The State House
Concord, New Hampshire 03301

Dear Mr. Speaker:

You have asked for responses to two questions concerning the 1974 Amendment to Article 3d of Part 2 of the Constitution of New Hampshire (hereinafter "Article 3d"), effective November 6, 1976, which provides for a meeting of the General Court "for organizational purposes" on the first Wednesday of December, biennially. You asked these two questions: whether the oath of office may be administered to members of the General Court at the newly authorized organizational meeting; and whether the General Court may elect the Secretary of State and Treasurer of New Hampshire at the organizational meeting. It is our opinion that the answer to each question is yes.

The new amendment must be read in conjunction with existing provisions of the Constitution. Two provisions which have significance in this respect are Article 22d of Part 2, pertaining to election of the Speaker and other officers of the House of Representatives and to adoption of the House rules of proceedings, and Article 84 of Part 2 pertaining to the oath of civil officers. Article 22d provides in pertinent part:

The house of representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house; and shall be judge of the returns, elections and qualifications, of its members, as pointed out in this constitution...

Article 84 provides in pertinent part: "[a]ny person chosen... representative, ...accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe..." the oath of office set forth in the Article.

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Clearly, election of the speaker and officers of the House of Representatives and the adoption of rules of proceedings in that forum are significant activities which directly pertain to the legislative body's execution of its function. Under the circumstances, it would seem appropriate to conclude that such activities are part of the "duties of ...office" which a State Representative must execute and that therefore a prerequisite to such execution is the oath of office under Article 84. In addition, election of officers and adoption of rules of proceedings clearly seem to be organizational and therefore the kind of activities which should occur during the organizational meeting in December. It is therefore our opinion that the oath of office must be administered at the beginning of the December organizational meeting.

The question remains, once sworn into office, what are the functions which the General Court may perform? The 1974 New Hampshire Voter's Guide, in describing the theory behind the December organizational meeting, states that the meeting would:

"assure that New Hampshire will always have a Legislature available to deal with possible state emergencies; and allow the newly elected Legislature to organize early, leaving the regular session free for lawmaking."

The Guide implies that one motivation for having a separate organizational meeting was to insure that the regular session was not spent in organizational matters. See also, Journal of the Convention to Revise the Constitution, Wednesday, May 8, 1974, at 14-15 (Resolution No. 4 providing that organizational activities will occur "only prior to beginning of the legislative session.")

The key to answering the second question which you have posed lies in the interpretation which is placed on the word "organizational." For purposes of interpreting this word in the present context, we note that the statement quoted above from the Voter's Guide contrasts organizational with lawmaking. In other words, the explanatory statement presented to the voters implied that organizational matters were to be identified by contrasting them with lawmaking functions. There is no need for argument that the elections of the Secretary of State and the Treasurer are not examples of lawmaking. It follows that these elections should be classified as organizational.

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It is therefore our opinion that elections of the Secretary of State and Treasurer may properly be conducted during the December organizational meeting of the General Court.

Yours respectfully,

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Attorney General

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Attorney